IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 796 of 1999

in

SPECIAL CIVIL APPLICATIONNo 631 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN DANA VIRA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 796 of 1999

MR KM PATEL for Appellant No. 1

NOTICE SERVED BY DS for Respondents No. 1-3

SR ADVOCATE MR KS NANAVATI with MR MIHIR H JOSHI for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE D.P.BUCH

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

In this appeal the validity of the judgment delivered by the learned single Judge in Special Civil Application No. 631 of 1999 has been challenged.

2. The facts giving rise to the present appeal, in a nutshell, are as under :

3. The appellant was granted 10 acres of land forming part of Survey No. 124 situated at Village Padana Taluka Lalpur by sanad dated 30.9.1976 on certain conditions. One of the important conditions incorporated in the order of grant was that the land was to be made cultivable and the appellant should start cultivating the land within two years from the date of the grant. As the appellant did not cultivate the land in question as per the condition incorporated in the order of grant, the Deputy Collector, Jamnagar issued notice to the appellant calling upon him to show cause as to why the land should not be forfeited in favour of the government for committing breach of the condition on which the land was granted. The appellant did not remain present before the Deputy Collector. The matter was adjourned from time to time as the appellant did not remain present before the Deputy Collector. Ultimately, after recording statement made by the concerned Circle Inspector on 16.12.1980 and after recording statement of the concerned Talati-cum-Mantri, the Deputy Collector passed an order on 11.5.1981 whereby the land was forfeited in favour of the Government.

4. The order of the Deputy Collector was challenged by the appellant before the Collector by an appeal dated 6.2.1997 which was rejected by the Collector by his order dated 5.4.1997 as the appeal had been filed after more than 15 years and no justifiable reason with regard to the delay was stated in the appeal memo/application.

5. Being aggrieved by the order passed by the Collector, the appellant filed a revision application under the provisions of sec.211 of the Bombay Land Revenue Code (hereinafter referred to as 'the Code') before the State of Gujarat. The Secretary (Appeals), heard the revision application and ultimately the

revision application was rejected. It was mainly submitted before the Secretary (Appeals) on behalf of the appellant that the Deputy Collector had passed order dated 11.5.81 without hearing the appellant. It was also submitted that the Collector did not pass a speaking order and the evidence which was placed on record was not considered by the lower authorities. It was also submitted that there was a policy of the government to regrant such forfeited lands upon payment of Re. 1 and, therefore, the land should have been regranted to the appellant.

6. The above submissions made before the revisional authority did not find favour with the authority. The revision application was rejected mainly on the ground that the appeal was filed against the order of the Deputy Collector after more than 15 years.

7. Being aggrieved by the order passed in revision application dated 6.6.1998, Special Civil Application No. 631/99 was filed by the appellant and the said petition was rejected by this Court on 7.5.1999.

8. Learned Advocate Shri A.J. Patel appearing with learned advocate Shri K.M. Patel has submitted before this court that the order of the Deputy Collector was bad in law for the reason that no opportunity of being heard had been afforded by the Deputy Collector to the appellant. It has been also submitted that it was not open to the Deputy Collector to invoke the provisions of sec. 79A of the Code and take possession of the land in question. As a matter of act, after cancellation of the grant, another separate order for taking possession of the land in question should have been passed. It has also been submitted that in pursuance of policy of the government, the land should have been regranted to the appellant upon payment of Re. 1.

9. Learned advocate Shri Patel has also relied upon the judgment delivered in the case of Patel Purshottamdas Motilal v. Patel Chhotabhai Motibhai, 1979 (2) GLR 918 to substantiate his argument that the delay should have been condoned even in absence of a separate application for condonation of delay.

10. On the other hand, learned AGP Shri Premal Joshi appearing for the government authorities has submitted that as the appellant had not cultivated the land as per the conditions on which the land was granted, it is very clear that the appellant was not interested in cultivating the land. It has been submitted by him that

in pursuance of a policy of the government, the land in question was granted to the appellant at a throwaway price so that the land can be cultivated and agricultural produce in the country can be increased. As the said object of the government had been frustrated because of keeping the land fallow, according to him, the Deputy Collector had rightly forfeited the land in favour of the government by an order dated 11.5.1981. He has also submitted that on account of delay caused in filing the appeal, the appeal was rightly not entertained by the Collector. According to him, the technical points raised with regard to legality of the order passed by the Deputy Collector should not be looked into by this court for the reason that the appellant is a person who was not interested in cultivating the land in question. Had he been really a needy person, he would not have kept the land fallow. He has also drawn our attention to the revenue record to show that the land in question was in fact not cultivated. He has also submitted that in spite of service of notice issued by the Dy. Collector, the appellant did not remain present before the Dy. Collector and, therefore, the Dy. Collector was constrained to decide the case after taking into consideration all relevant factors and according to him, it is a matter of fact that the land was not cultivated even as per the revenue record and, therefore, order passed by the Dy. Collector and confirmed by higher authorities is absolutely just, legal and proper.

11. Upon hearing the learned advocates and upon perusal of the record pertaining to the case, we are of the view that the impugned order of the learned single Judge confirming the order passed by the Secretary (Appeals) is just and proper. In our opinion, the Collector rightly did not entertain the appeal which was filed after more than 15 years. It is also pertinent to note that writ jurisdiction is a discretionary jurisdiction and this court may not exercise the said jurisdiction in favour of a person who has not come with clean hands or who has committed some illegality or has committed breach of statutory or contractual provisions. In this case, the appellant did not cultivate the land in question and committed breach of the condition on which the land was granted to him and, therefore, the appellant did not deserve any sympathy. In our opinion, looking to the above facts, discretionary jurisdiction of this court was rightly not exercised in favour of the appellant by the learned single Judge.

12. Reliance placed by learned advocate Shri A.J. Patel on the case of Patel Purshottamdas Motilal (supra)

is not well-founded for the reason that no case was made out even in the memo of appeal filed before the Collector for condonation of the delay of 15 years. The appeal filed before the Collector was dismissed not because no separate application for condonation of delay was filed. The appeal was dismissed because though there was delay of 15 years in filing the appeal, no justifiable reason for condonation of the delay was stated.

13. Looking to the admitted fact that the land had not been cultivated by the appellant till the matter was finally decided in revision application by the government, we do not see any reason for the revenue authorities to take any lenient view in favour of the appellant for regrant of the land in question. Looking to the conduct of the appellant, in our opinion, this court rightly did not exercise its jurisdiction in favour of the appellant because the appellant never cultivated the land in question. This denotes that the appellant was not a needy person. The order of the Deputy Collector dated 11.5.81 cannot be faulted with.

14. The submission with regard to validity of the order of the Deputy Collector at this stage need not be looked into especially when the appellant has already been dispossessed of the land in question. It would be absolutely unjust to ask the respondent government authorities to hand over possession of the land in question to the appellant after more than 24 years. It is also clear that though served with a notice of the Dy. Collector, the appellant did not remain present before the Dy. Collector and, therefore, the Dy. Collector had passed the order after going through the record. We are also in agreement with the reasons given by the learned single Judge for rejecting the petition. We do not think that equity is in favour of the appellant and, therefore, in our opinion, the learned single Judge has rightly rejected the petition.

15. In the circumstances, we do not find any substance in this appeal and the appeal is dismissed with no order as to costs.

(A.R. Dave, J.)

(D.P. Buch, J.)

(hn)